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10 **BEFORE THE**
11 **BOARD OF REGISTERED NURSING**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

Case No. **2011-249**

15 **FRANK POYER**
3248 21st Street, Unit 1
16 San Francisco, CA 94110
Registered Nurse No. 294776

ACCUSATION

17 Respondent.

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19 Complainant alleges:

20 **PARTIES**

- 21 1. Louise R. Bailey, M.Ed., R.N. (Complainant) brings this Accusation solely in her
22 official capacity as the Interim Executive Officer of the Board of Registered Nursing.
23 2. On or about August 31, 1978, the Board of Registered Nursing issued Registered
24 Nurse Number 294776 to Frank Poyer (Respondent). The Registered Nurse was in full force and
25 effect at all times relevant to the charges brought in this Accusation and will expire on
26 November 30, 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing, Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

6. Section 118, subdivision (b) of the Code states:

"The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground."

STATUTORY PROVISIONS

7. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

...

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."

8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

9. California Code of Regulations, title 16, § 1444 provides, in pertinent part, that:

“A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare.”

COST RECOVERY

10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

11. Respondent has subjected his license to disciplinary action under section 2761, subdivision (a) on the grounds of general unprofessional conduct in that on or about August 18, 2003, he approached a man in a park and Respondent proposed that the man perform oral sex on him. Respondent unzipped his pants and began to pull his erect penis out of his pants.

SECOND CAUSE FOR DISCIPLINE

(Conviction of a Crime)

12. Respondent has subjected his license to disciplinary action under sections 2761, subdivision (f) and 490 in that on or about December 22, 2003, in a criminal court proceeding entitled *The People of the State of New York v. Frank J. Poyer*, in the Justice Court, Town of Tonawanda, New York, Complaint No. 03081082, Respondent was convicted by a plea of guilty of violating New York Penal Law section 245.01 (exposure person). The circumstances of the crime are set forth in paragraph 11, above.

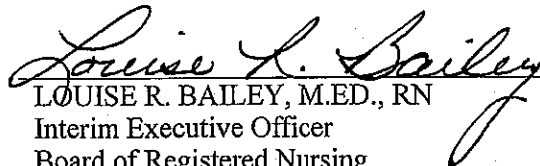
PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing, Department of Consumer Affairs, issue a decision:

1. Revoking or suspending Registered Nurse Number 294776, issued to Frank Poyer;
2. Ordering Frank Poyer to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: _____

9/20/10


LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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